IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.No.790 of 2001

The General Manager,
Tamilnadu State Transport
Corporation (Kumbakonam Dn.I) Ltd. ... Appellant/Respondent

vs.

Sambandam ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree, dated 02.11.1999 made in M.C.O.P.No.111 of 1997 on the file of the Motor Accidents Claims Tribunal, (Additional Subordinate Judge), Mayiladuthurai.

For Appellants : Mr.M.Krishnamoorthy

For Respondent : Mr.A.Muthukumar

J U D G M E N T

Aggrieved by the award dated 02.11.1999 made in M.C.O.P.No.111 of 1997 on the file of the Motor Accidents Claims Tribunal, (Additional Subordinate Judge), Mayiladuthurai, the Transport Corporation has preferred this appeal.

2. Brief facts of the case are as follows: On 15.03.1997 at 11.30 p.m., when the respondent/claimant was walking on the road, the bus owned by the appellant-Transport Corporation, came in a rash and negligent manner, hit the respondent/claimant and he fell down. He sustained grievous injuries. Immediately after the accident, he was rushed to the Government Hospital, Mayiladuthurai and intensive treatment was given. Thereafter, he was referred to Thanjavur Medical College Hospital, where he was treated as inpatient for two days. He had taken native treatment at Puttur. Since the treatment did not give the expected result, he was again treated as inpatient in Bone and Joint Clinic, Anna Nagar, Chennai for 16 days. A complaint was lodged in Sembanar Kovil Police Station and on investigation, a charge sheet was laid against the driver of the bus. The respondent/claimant has stated that at the time of accident, he was running a cycle shop in the name and style of "Lucky Cycles" and earning Rs.3,000/- per month. He claimed compensation of Rs.3 lakhs.

3. The appellant-Transport Corporation denied the accident and contended that the bus was not involved in the accident and that they are not liable to pay compensation. They disputed the age, income and the nature of injuries of the respondent/claimant.

4. Before the Tribunal, the respondent/claimant examined himself as PW.1. PW.2 is the witness to the accident. PW.3 is the Doctor, who examined the respondent/claimant with reference to the medical records. Ex.P1 – First Information Report dated 16.03.1997; Ex.P2 – Motor Vehicles Inspection Report; Ex.P3 – Wound Certificate dated 16.03.1997; Ex.P4 (series) – Medical receipts issued by Bone and Joint Clinic; Ex.P5 (series) – Trip sheet; Ex.P6 (series) – Examination Report; Ex.P7 (series) – Out-patient chits; Ex.P8 – receipts evidencing payments; Ex.P9 – Hotel bills; Exs.P10 and P11 (series) – Medical bills; Ex.P12 – X-ray and Ex.P13 – Disability certificate dated 22.07.1999 were marked on behalf of the respondent/claimant. On behalf of the appellant-Transport Corporation, the conductor of the bus was examined as RW.1 and no document was marked.

5. The Tribunal, on evaluation of pleadings and evidence, found that the driver of the bus was responsible for the accident and awarded compensation of Rs.72,000/- with interest at the rate of 12% per annum from the date of claim till the date of realisation.

6. Heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellants and Mr.A.Muthukumar, learned counsel for the respondent.

7. Learned counsel for the appellant submitted that the Tribunal has erred in relying on the evidence of Pws.1 and 3 and held that the bus was involved in the accident and that the accident occurred due to the negligence of the driver of the bus. He further submitted that the Tribunal ought to have considered the evidence of RW.1, which is cogent and reliable.

8. The accident had occurred on 15.03.1997 at 11.30 p.m. PW.1 has deposed that when he was walking in the extreme left side of the road, the driver of the bus while negotiating a curve, hit him and he sustained grievous injuries. The version of the respondent/claimant is supported by the evidence of PW.3, witness to the accident. PW.2 has deposed that on the date of accident, after closing his shop, the respondent/claimant was standing on the road. At that time, the bus owned by the appellant-Transport Corporation came in a rash and negligent manner and hit the respondent/claimant. The claimant sustained grievous injuries. He further deposed that immediately after the accident, the claimant was taken in a taxi to the hospital. He also deposed that he took the respondent/claimant to Puttur for native treatment.

9. RW.1, Conductor of the bus deposed that his vehicle was intercepted near AVC College and he was asked to bring the vehicle to the Senpanar Kovil Police Station. But, no evidence was let in to corroborate his version. On the other hand, the evidence of respondent/claimant is corroborated by Ex.P1, First Information Report.

10. It is settled law that the proceedings before the Claims Tribunal are summary in nature and it is sufficient to consider whether there is any prima facie case and strict proof is not required, like a criminal case. In the instant case, there is evidence to show that the accident occurred in the manner as set out in the claim petition. The finding of the Tribunal as regards negligence cannot be termed as perverse and does not warrant reversal. Therefore, it is confirmed.

11. Learned counsel for the appellant submitted that the compensation of Rs.72,000/- for the fracture of left femur is excessive. He further submitted that the compensation of Rs.10,000/- for medical expenses is also on the higher side.

12. The respondent/claimant deposed that he sustained fracture of left femur and was treated as inpatient in Thanjavur Medical College Hospital for two days. He further deposed that since the treatment given in the Government Hospital was not satisfactory, he was constrained to take native treatment in Puttur, Andra Pradesh. Despite the nature treatment, bones did not fuse properly.

Thereafter, he was treated in Bone and Joint Clinic, Anna Nagar for 16 days. The Tribunal awarded compensation of Rs.10,000/- for medical expenses as claimed.

13. Learned counsel for the respondent submitted that the respondent/claimant incurred expenses for transportation and that the Tribunal, on the basis of Ex.P5 (series), Trip sheets, ought to have awarded compensation for transportation charges. He further submitted that Ex.P6 would prove that he was treated in Bone and Joint Clinic, Anna Nagar as inpatient between 02.07.1997 and 18.07.1997 and a surgery was performed during the period.

14. Ex.P8, Receipt for payment of bills, prove that the respondent/claimant has paid Rs.40,440/- as medical expenses for the surgery and for the period of hospitalisation in the Bone and Joint Clinic, Anna Nagar, Chennai.

15. Learned counsel for the respondent placing reliance on the decision of the Supreme Court in Nagappa v. Gurudayal Singh and others reported in AIR 2003 SC 674 and submitted that the Court can award just compensation, which is reasonable on the basis of the evidence produced on record, even in the absence of any appeal or cross objection for enhancement of compensation.

16. Per contra, learned counsel for the appellant contended that the compensation awarded by the Tribunal is just and reasonable and it does not require enhancement. In support of his contention, he relied on a decision of the Court in National Insurance Company Ltd., v. Rani & others reported in 2004 (4) LW 151, and submitted that power of the appellate Court to enhance compensation must be exercised in rare cases where there is inconsistent findings and an order or decree has been passed which is wholly uncalled for.

17. In National Insurance Company Ltd., rep. By its Divisional Manager, Pudukottai v. Rajini and others, reported in 2004(4) L.W. 151, the Division Bench of this Court has held that the Court, by invoking Order 41 Rule 33 of C.P.C., the Court can enhance compensation in the absence of Cross-objection filed by the claimant.

18. In the instant case, the Tribunal has not considered Exs.P6 to P8, which prove the nature of treatment undergone by the respondent/claimant. On facts, I am of the considered opinion, this is one of the cases where the power under Order 41 Rule 33 of C.P.C., has to be exercised to do substantial justice and to award 'just compensation'. Following the principle laid in the above decision of the Supreme Court as well as this Hon'ble Court, I am of the opinion, the respondent/claimant is entitled to a further compensation of Rs.40,440/- for medical expenses, which he had incurred for the surgery and hospitalisation.

19. Tribunal while granting compensation has directed the appellant-Transport Corporation to deposit the award amount within a period of two months from the date of receipt of a copy of this order. In default, imposed a condition that the award shall carry an interest at the rate of 15% per annum. In a decision in Shanmughasundaram & another v. Jothi & others [2005 (1) L.W. 566], this Court has held that while passing award, there is no statutory backing for a default clause and accordingly deleted the same. Therefore, 'Clause 3' of the decree relating to the default interest is liable to be set aside.

20. In view of the above, the respondent/claimant is entitled to an enhanced compensation of

Rs.40,440/- towards medical expenses with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. The appellant-Transport Corporation is directed to deposit the enhanced amount with accrued interest to the credit of M.C.O.P.No.111 of 1997 on the file of the Motor Accidents Claims Tribunal, (Additional Subordinate Judge), Mayiladuthurai, within a period of two months from the date of receipt of a copy of this order.

21. In the result, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

skm

To

1. The Motor Accidents Claims Tribunal,
(Additional Subordinate Judge), Mayiladuthurai.

2. The Section Officer,
V.R.Section, High Court, Madras.

1 cc To Mr.M.Krishnamoorthy, Advocate, SR.5355.
1 cc To Mr.A.Muthukumar, Advocate, SR.5224.

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AKM(CO)
RVL 30.03.2007